

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

<hr/>)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	
ESTATE OF DAVID W. ST. GERMAIN, Jr. and)	
ZENECA INC.)	
)	
Defendants.)	
<hr/>)	

CONSENT DECREE

TABLE OF CONTENTS

I.	<u>BACKGROUND</u>	1
II.	<u>JURISDICTION</u>	1
III.	<u>PARTIES BOUND</u>	2
IV.	<u>DEFINITIONS</u>	2
V.	<u>STATEMENT OF PURPOSE</u>	5
VI.	<u>PAYMENT BY ESTATE OF RESPONSE COSTS</u>	5
VII.	<u>PAYMENT BY ZENECA OF RESPONSE COSTS</u>	8
VIII.	<u>FAILURE TO COMPLY WITH CONSENT DECREE</u>	9
IX.	<u>RELEASE OF NOTICE OF FEDERAL LIENS</u>	11
X.	<u>COVENANT NOT TO SUE BY PLAINTIFF</u>	11
XI.	<u>RESERVATION OF RIGHTS BY UNITED STATES</u>	11
XII.	<u>COVENANT NOT TO SUE BY THE SETTLING PARTIES</u>	12
XIII.	<u>EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION</u>	13
XIV.	<u>ACCESS</u>	14
XV.	<u>ACCESS TO INFORMATION</u>	14
XVI.	<u>RETENTION OF RECORDS</u>	14
XVII.	<u>CERTIFICATION</u>	15
XVIII.	<u>NOTICES AND SUBMISSIONS</u>	15
XIX.	<u>RETENTION OF JURISDICTION</u>	17
XX.	<u>INTEGRATION/APPENDICES</u>	17
XXI.	<u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u>	17
XXII.	<u>SIGNATORIES/SERVICE</u>	17
XXIII.	<u>FINAL JUDGMENT</u>	18
XXIV.	<u>EFFECTIVE DATE</u>	18
XXV.	<u>MODIFICATION</u>	18

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended (“CERCLA”), seeking reimbursement of response costs incurred for performance of removal actions taken by EPA in connection with the release or threatened release of hazardous substances at three separate locations in Taunton, Massachusetts: the St. Germain Drum Site, the Oak Street Drum Disposal Area Site, and the Route 44 Disposal Area Site (collectively, the “Sites”). In conducting the three removal actions, EPA incurred response costs totaling \$3,416,747.32 through May 1, 2006.

B. The St. Germain Drum Site (“St. Germain Site”). The St. Germain Site is located at 340-350 Winthrop Street in Taunton, Bristol County, Massachusetts. The St. Germain Site is a part of the Estate of David W. St. Germain, Jr. (the “Estate”).

C. Oak Street Drum Disposal Area Site (“Oak Street Site”). The Oak Street Site is located on Oak Street in Taunton, Bristol County, Massachusetts and identified as Parcel 2937-017 035-0039 on the City of Taunton Tax Map .

D. Route 44 Disposal Area Site (“Route 44 Site”). The Route 44 Site is located at 354 - 356 Winthrop Street, in Taunton, Bristol County, Massachusetts.

E. EPA alleges that the Estate and Zeneca Inc. (“Settling Parties”) are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are liable for response costs incurred or to be incurred at or in connection with the Sites.

F. The Settling Parties have entered into this Consent Decree and do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

G. The United States and the Settling Parties agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal

jurisdiction over the Settling Parties. The Settling Parties consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States; upon the Estate and its successors, distributees and assigns; and upon Zeneca Inc. and its successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Parties under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

“Combined Unreimbursed Response Costs” shall mean the total amount of Past Response Costs incurred by EPA in responding to the release or threat of release of hazardous substances at the St. Germain Site, the Oak Street Site, and the Route 44 Site, minus any lease proceeds paid to EPA by the Estate pursuant to Paragraph 7 and any Past Response Costs recovered by EPA from Zeneca pursuant to Section VII of this Consent Decree.

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

“Day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance

Superfund established under the Internal Revenue Code, 26 U.S.C. § 9507.

“Estate” shall mean the Estate of David W. St. Germain, Jr., its successors, distributees, and assigns.

“Fair Market Rate” shall mean the price at which the St. Germain Property would be leased between a willing lessee and a willing lessor under actual market conditions, neither being under any compulsion to lease and both having reasonable knowledge of relevant facts.

“Fair Market Value” shall, except in the event of a foreclosure or transfer by deed or other assignment in lieu of foreclosure, mean the price at which the St. Germain Property, as defined herein, would change hands between a willing buyer and a willing seller under actual market conditions, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. In the event of a transfer by foreclosure, “Fair Market Value” shall mean the amount obtained at the foreclosure sale. In the event of a transfer by a deed or other assignment in lieu of foreclosure, “Fair Market Value” shall mean the balance of any mortgage held by the Estate on the St. Germain Property at the time of the transfer.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“Lease Agreement” shall mean any agreement or arrangement related to the lease, rental, or use of the St. Germain Property, or any portion thereof, for any purpose in exchange for money or in-kind services.

“Net Lease Proceeds” shall mean the total annual value of all consideration received by the Estate for the Lease of the St. Germain Property beginning on the Effective Date of this Consent Decree (or if the consideration cannot be determined, or is less than the Fair Market Rate, the Fair Market Rate of leasing the St. Germain Property) less federal and state taxes owed on the proceeds. The Estate shall provide EPA with documentation sufficient to show the total value of all consideration received by the Estate for the Lease (or if the consideration cannot be determined, the Fair Market Rate of the Lease) at the time of the Lease, the amount of the proceeds of the Lease, and the amounts corresponding to the federal and state taxes owed on the proceeds.

“Net Sales Proceeds” shall mean the total value of all consideration received by the Estate for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the St. Germain Property) less (i) the balance of the Estate’s mortgage on the St. Germain Property, (ii) closing costs limited to those reasonably incurred and actually paid by the Estate

associated with the Transfer of the St. Germain Property, (iii) federal and state taxes owed on the proceeds (exclusive of taxes required to be paid pursuant to Paragraph 8), and (iv) any and all Probate fees and expenses which are associated with the sale of the St. Germain Property and/or fees allowed and expenses as otherwise allowed and approved by the Commonwealth of Massachusetts, Trial Court (Probate and Family Court Department) having jurisdiction thereof. The Estate shall provide EPA with documentation sufficient to show the total value of all consideration received by the Estate for each Transfer (or if the consideration cannot be determined, the Fair Market Value of the St. Germain Property) at the time of each Transfer, the amount of the proceeds of the Transfer, and the amounts corresponding to items (i) through (iv) above. This documentation shall include, either as part of the report or separately, (1) a tax statement showing the assessed valuation of the St. Germain Property for each of the three years immediately preceding the Transfer, and (2) a schedule showing all outstanding indebtedness on the St. Germain Property. This documentation, upon request, shall also include but not be limited to, the report of an appraisal paid for by the Estate, performed by an appraiser satisfactory to the Parties and based upon appraisal assumptions satisfactory to the Parties.

“Oak Street Site” shall mean the Oak Street Superfund Site encompassing approximately 1 acre, located on Oak Street in Taunton, Bristol County, Massachusetts and identified as Parcel 2937-017 035-0039 on the City of Taunton Tax Map. The Oak Street Site is more particularly described in Appendix B.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States, the Estate and Zeneca Inc.

“Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the St. Germain Site, the Oak Street Site, and the Route 44 Site through May 1, 2006, plus accrued Interest on all such costs through such date.

“Plaintiff” shall mean the United States.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

“Route 44 Site” shall mean the Route 44 Disposal Area Superfund Site, encompassing approximately 3 acres, located at 354 - 356 Winthrop Street, in Taunton, Bristol County, Massachusetts and more particularly described in Appendix C.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Parties” shall mean the Estate and Zeneca Inc.

“St. Germain Property” shall mean that portion of the St. Germain Site that was owned by David W. St. Germain, Jr. from September 6, 1977 until his death on March 7, 1997, and is now currently a part of the Estate. The St. Germain Property is located at 340 - 350 Winthrop Street, Taunton, Massachusetts and more particularly described in Appendix A.

“Sites” shall mean the St. Germain Site, the Oak Street Site, and the Route 44 Sites, collectively.

“Transfer” shall mean each sale, assignment, transfer or alienation of any type of the St. Germain Property, or any portion thereof, or interest therein, by the Estate or an entity owning the St. Germain Property, where any interest in the St. Germain Property by the Estate or an entity owning the St. Germain Property (i) is transferred and Fair Market Value is received in consideration, or (ii) is transferred involuntarily by operation of law, including foreclosure and its equivalents following default on the indebtedness secured, in whole or in part, by the St. Germain Property, including, but not limited to, a deed or other assignment in lieu of foreclosure.

“Zeneca” shall mean Zeneca Inc. and its successors and assigns.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the objective of the Parties is for the Estate and Zeneca to make cash payments to address their liability for the Sites as provided in the Covenant Not to Sue by Plaintiff in Section X, and subject to the Reservations of Rights by United States in Section XI.

VI. PAYMENT BY ESTATE OF RESPONSE COSTS

5. Sale and/or Lease of the St. Germain Property.

a. The Estate agrees that it will not sell, assign, transfer or exchange any interest in the St. Germain Property except by means of a Transfer. The Estate shall use its Best Efforts to market fee simple title to the entire St. Germain Property for sale within ten days of the Effective Date of this Consent Decree, and shall continue to use its Best Efforts to market the St. Germain Property for sale until such time as the contract of sale is accepted and approved. The Transfer of the St. Germain Property shall be subject to, and conditioned upon, EPA's prior written approval. The Estate shall consult with EPA regarding all terms and conditions of the Estate's listing of the St. Germain Property for sale with a broker, dealer or agent and the Estate's advertising of the St. Germain Property as being for sale. Such consultation shall occur not later than ten days before listing or advertising the St. Germain Property.

b. "Best Efforts" shall include: 1) listing the St. Germain Property for sale with a broker, dealer or agent who usually deals with the type of property in question; 2) advertising the St. Germain Property as being for sale on at least a monthly basis in national computer networks, commercial referral services, direct marketing and mailing programs, real estate publication, trade or other publication suitable for the St. Germain Property or a newspaper of general circulation (defined as one with a circulation of over 10,000) covering Taunton, Massachusetts; 3) responding to reasonable inquiries of prospective buyers; 4) maintaining the St. Germain Property in suitable condition for exhibition to prospective buyers; and 5) allowing the St. Germain Property to be shown at all reasonable times.

c. The Estate agrees that it will not lease, transfer, assign or otherwise alienate any portion of, or interest in, the St. Germain Property beyond the expiration of the current Lease Agreement with Fogg & Bagni Auto Sales Inc. The Estate also agrees not to extend the current Lease Agreement with Fogg & Bagni Auto Sales Inc.

6. Payments for Sale of the St. Germain Property

a. The Estate shall pay to EPA all the Net Sales Proceeds of the Transfer of the St. Germain Property, up to the amount of EPA's Combined Unreimbursed Response Costs, plus an additional sum for Interest on that amount calculated from May 1, 2006 through the date of payment ("Combined Unreimbursed Response Costs Plus Interest"). Payment shall be made to EPA within 15 days of the effective date of the Transfer of the St. Germain Property. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number _____, the EPA Region and Site Spill ID Number 017T, and DOJ Case Number 90-11-3-07658. Payment shall be made in accordance with instructions provided to the Estate by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Massachusetts following lodging of the Consent Decree. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. At the time of payment, the Estate shall send notice that payment has been made to EPA and DOJ in accordance with Section XVIII (Notices and Submissions).

b. In the event the Net Sales Proceeds from the Transfer of the St. Germain Property is in excess of EPA's Combined Unreimbursed Response Costs Plus Interest, the Estate shall pay all sums in excess of EPA's Combined Unreimbursed Response Costs Plus Interest to Zeneca. Payment shall be made to Zeneca within 15 days of the effective date of the Transfer of St. Germain Property. Payment shall be made by check identifying Zeneca Inc. as the payee. The check shall be transmitted to Luke Mette, Vice President, Zeneca Inc., by either: (i) certified mail addressed to 1800 Concord Pike, P.O. Box 15437, Wilmington, DE 19850-5347; or (ii) overnight mail addressed to 1800 Concord Pike, Wilmington, DE 19803.

c. At least 30 days prior to any such Transfer, the Estate shall notify EPA of the proposed Transfer, which notice shall include a description of the St. Germain Property to be sold, the identity of the purchaser, the terms of the Transfer, the consideration to be paid, and a copy of the Transfer agreement. The proposed sales price must be at least equal to the Fair Market Value of the St. Germain Property and, upon request by EPA, based upon an appraisal obtained within 1 year of the Transfer. The Estate shall notify EPA of the completion of the Transfer within 10 days of the date of closing and shall include with such notification a copy of the closing documents, including final executed documentation for the conveyance and a work sheet setting forth the Net Sales Proceeds and the amount payable to EPA and, if applicable, the amount payable to Zeneca.

d. In the event of a Transfer of the St. Germain Property or any portion thereof, the Estate shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Consent Decree, except if EPA and the Settling Parties modify this Consent Decree as provided in Section XXV (Modification).

e. Any contract of sale shall state that the sale is conditioned upon EPA's prior written approval of the sale. All consideration for the sale shall be paid at the time of the closing, unless the EPA agrees to a different arrangement. Within two days of entering into a contract of sale with any prospective purchaser, the Estate shall provide EPA with a copy of the sales contract and a written notice to EPA indicating the identity of the purchaser, and the expected amount of the Net Sales Proceeds at the time of the closing.

f. At the time of the closing of the transaction for the Transfer, the Estate shall direct the closing agent to disburse the Net Sales Proceeds as set forth in Paragraph 6.a. and b.

7. Payments for Lease of the St. Germain Property

a. As of the Effective Date of this Decree, the Estate shall pay to EPA 100% of the Net Lease Proceeds of the current Lease Agreement with Fogg & Bagni until termination or expiration of the Lease Agreement. Payment(s) shall be made to EPA directly pursuant to the terms of the Lease Agreement, on a monthly basis. Payment shall be made within seven (7) days of receipt of the rental payment by the Estate, and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying each check, shall identify the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 017T, and DOJ Case Number 90-11-3-07658, and shall be sent to:

EPA Superfund
EPA Region I
P. O. Box 360197M
Pittsburgh, PA 15251

At the time of payment, the Estate shall send notice that payment has been made to EPA and DOJ in accordance with Section XVIII (Notices and Submissions).

b. During the Lease of the St. Germain Property, the Estate shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Consent Decree, except if EPA and the Estate modify this Consent Decree in writing.

8. Taxes, Liens, and Other Matters: The Estate shall be liable for all past and future real estate taxes and assessments due and owing on the St. Germain Property, and shall pay all past and future real estate taxes and all past and future assessments which become due and owing on the St. Germain Property. Within thirty (30) days after the signing this Consent Decree, the Estate shall pay any unpaid real estate taxes and assessments that are due and owing on the St. Germain Property. Upon request, the Estate shall provide to the United States proof that it has paid all real estate taxes. The Estate shall timely make all payments on any obligations that are secured by any real estate in which the Estate has an ownership interest as of the time of signing this Consent Decree. The Estate shall maintain casualty insurance on the St. Germain Property in an amount equal to the fair market value of the St. Germain Property. Payment of real estate taxes, assessments, obligations, and insurance premiums, other than those customarily prorated at closing, shall not be considered in calculating Net Sales Proceeds. No new easement, restriction or encumbrance may be placed on the St. Germain Property by the Estate without the prior approval of the United States.

9. Consent Judgment Lien: Within 30 days of entry of this Consent Decree, the Estate shall file in the land records office of the appropriate county for the St. Germain Property a Consent Judgment Lien, in the form attached hereto as Appendix D, indicating that a consent judgment has been entered in this action requiring the Estate to pay the amount set forth in Section VI (Payment by Estate of Response Costs) of this Consent Decree from Net Sales Proceeds from the Transfer of St. Germain Property, and/or Net Lease Proceeds from the Lease of St. Germain Property, and placing a Consent Judgment Lien on the St. Germain Property in the amount of this payment obligation. Copies of the recorded liens shall be provided to EPA within 60 days of signing this Consent Decree.

VII. PAYMENT BY ZENECA OF RESPONSE COSTS

10. Within 60 days of the Effective Date of this Consent Decree, Zeneca shall make three payments to EPA totaling \$2,562,560.49. The three payments shall be distributed to the respective Sites as follows: a) \$817,114.39 directed to the St. Germain Drum Site; b) \$1,192,899.59 directed to the Route 44 Disposal Area Site; and c) \$552,546.51 directed to the Oak Street Drum Disposal Area Site. Zeneca shall pay an additional sum for Interest on the above payments calculated from May 1, 2006 through the date of payment.

11. Payment by Zeneca shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number _____, DOJ Case Number 90-11-3-07658, the EPA Region and Site/Spill ID Numbers are as follows: St. Germain Drum Site: 017T; Route 44 Disposal Area Site: 018P; and Oak Street Drum Disposal Area Site: 01AB. Payment shall be made in accordance with instructions provided to Zeneca by the Financial Litigation Unit of the U.S. Attorney’s Office in the District of Massachusetts following lodging of the Consent Decree. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

12. At the time of payment, Zeneca shall also send notice that payment has been made to EPA in accordance with Section XVIII (Notices and Submissions). Such notice shall reference EPA Region I and Site/Spill ID Number and the Civil Action No. _____. The Site/Spill ID Numbers are as follows: St. Germain Drum Site: 017T; Route 44 Disposal Area Site: 018P; and Oak Street Drum Disposal Area Site: 01AB.

13. The amount to be paid pursuant to Paragraph 11 shall be deposited in the EPA Hazardous Substance Superfund.

VIII. FAILURE TO COMPLY WITH CONSENT DECREE

14. Interest on Late Payments. If the Estate fails to make any payments under Paragraphs 6 and 7 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment. If Zeneca fails to make any payments under Paragraph 10 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

15. Stipulated Penalty.

a. If any amounts due under Paragraphs 6 and 7 are not paid by the required date, the Estate shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 14, \$500 per violation per day that such payment is late. If the Estate does not comply with the notice obligations in Section VI (Payment by Estate of Response Costs), the Estate shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, \$100 per violation per day of such noncompliance. Notice obligations in Section VI (Payment by Estate of Response Costs) include: i) consulting with EPA regarding all terms and conditions of the Estate’s listing of the St. Germain Property with a broker, dealer or agent and the Estate’s advertising of the St. Germain Property as being for sale (Paragraph 5); ii) sending notice that payment has been made to EPA and DOJ in accordance with Section XVIII (Notices and Submissions) (Paragraphs 6.a. and 7.a.); iii) notifying EPA of the proposed Transfer at least 30 days prior to any such Transfer (Paragraph 6.b.); iv) notifying EPA of the completion of the Transfer within 10 days of the date of closing (Paragraph 6.b.); and v) providing written

notice to EPA indicating the identity of the purchaser, and the expected amount of the Net Sales Proceeds at the time of the closing (Paragraph 6.d.).

b. If any amounts due under Paragraphs 10 are not paid by the required date, Zeneca shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 14, \$1,000 per violation per day that such payment is late.

c. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region, the Site Spill ID Number and Civil Action No. _____. The Site/Spill ID Numbers are as follows: St. Germain Drum Site: 017T; Route 44 Disposal Area Site: 018P; and Oak Street Drum Disposal Area Site: 01AB. Payments under this Paragraph shall be sent to:

EPA Superfund
EPA Region I
P. O. Box 360197M
Pittsburgh, PA 15251

d. At the time of each payment, the Settling Party making the payment shall send notice that payment has been made to EPA and DOJ in accordance with Section XVIII (Notices and Submissions).

e. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified the Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due, or the day a violation occurs, and shall continue to accrue through the date of payment "or the final day of correction of the noncompliance or completion of the activity." Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

16. If the United States brings an action to enforce this Consent Decree, the Settling Party against whom such action is brought shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

17. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of the Settling Party's failure to comply with the requirements of this Consent Decree.

18. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse the Settling Parties from payment as required by Section VI (Payment by Estate of Response Costs) or Section VII (Payment by Zeneca of Response Costs) or from performance of any other requirements of this Consent Decree.

IX. RELEASE OF NOTICE OF FEDERAL LIENS

19. Within 60 days after EPA receives payment in full of the EPA Lien and the Consent Judgment Lien on the St. Germain Property, plus an additional sum for Interest, as provided in Paragraphs 6 and 7 (Payments for Sale of the St. Germain Property and Payments for Lease of the St. Germain Property) of this Consent Decree, EPA shall release the EPA Lien and Consent Judgment Lien by filing a Release of Notice of Federal Liens in the Recorder's Office at the Registry of Deeds, Bristol County, Commonwealth of Massachusetts. The Release of Notice of Federal Liens shall release the EPA Lien filed on July 6, 2005 (found in Book 14953 and Page 216) and the Consent Judgment Lien filed within 30 days of entry of this Consent Decree and shall not release any other lien, easement or encumbrance which may exist upon the St. Germain Property.

X. COVENANT NOT TO SUE BY PLAINTIFF

20. Except as specifically provided in Section XI (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against the Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with regard to Past Response Costs at the Site. This covenant not to sue is conditioned upon the satisfactory performance by the Settling Parties of their obligations under this Consent Decree. This covenant not to sue extends only to the Estate and Zeneca and does not extend to any other person.

XI. RESERVATION OF RIGHTS BY UNITED STATES

21. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 20. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against the Settling Parties with respect to:

- a. liability for failure of the Settling Parties to meet a requirement of this Consent Decree;
- b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability, based upon the Settling Parties' ownership or operation of the Sites, or upon the Settling Parties' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Sites, after signature of this Consent Decree; and

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Sites.

22. Notwithstanding any other provision of this Consent Decree, EPA reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action against the Estate seeking relief other than as provided in this Consent Decree, if the financial certification made by the Estate in Paragraph 36, is false or, in any material respect, inaccurate.

XII. COVENANT NOT TO SUE BY THE SETTLING PARTIES

23. The Settling Parties covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Sites or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Sites, including any claim under the United States Constitution, the Constitution of the Commonwealth of Massachusetts, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Sites.

Except as provided in Paragraph 25 (Waiver of Claims) and Paragraph 29 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 21 (c) - (e), but only to the extent that the Settling Party's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

24. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

25. The Settling Parties agree not to assert any CERCLA claims or causes of action that they may have for matters addressed in this Consent Decree, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that the Settling Parties may have against any person if such person asserts a claim or cause of action relating to the Site against the Settling Parties.

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

26. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law.

27. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Parties are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all Past Response Costs incurred at the Sites by the United States. The “matters addressed” in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against the Estate or Zeneca coming within the scope of such reservations.

28. The Settling Parties agree that, with respect to any suit or claim for contribution brought against it for matters addressed in this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, the Settling Parties shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

29. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, the Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section X.

XIV. ACCESS

30. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require and/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XV. ACCESS TO INFORMATION

31. The Settling Parties shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

32. **Confidential Business Information and Privileged Documents.**

a. The Settling Parties may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified the submitting Settling Party that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to the Estate.

b. The Settling Parties may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Settling Party asserts such a privilege in lieu of providing records, it shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

33. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other records evidencing conditions at or around the Site.

XVI. RETENTION OF RECORDS

34. Until 5 years after the entry of this Consent Decree, the Estate shall preserve and retain all non-identical records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 6 years after the entry of this Consent Decree, Zeneca shall preserve and retain all non-identical records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

35. After the conclusion of the document retention period in the preceding paragraph, the Settling Party shall notify EPA and DOJ at least 60 days prior to its destruction of any such records, and, upon request by EPA or DOJ, shall deliver any such records to EPA. The Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Party asserts such a privilege, it shall provide Plaintiff with the following: (1) the title of the record; (2) the date of the record; (3) the name and title of the author of the record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the record; and (6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

XVII. CERTIFICATION

36. The United States has entered into this Consent Decree in part on information provided by the Estate to the probate court in the inventory of assets filed with the Commonwealth of Massachusetts, Trial Court (Probate and Family Court Department) on June 20, 1997. By signing this Consent Decree, the Executor of the Estate certifies that, to the best of the Executor's knowledge and belief, that this inventory of assets is complete, true and accurate, and remains complete, true and accurate. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right of the United States to void this Consent Decree; to reinstitute or reopen this action; and/or commence a new action seeking relief other than as provided in this Consent Decree, in the event that this Certification is false or, in any material aspect, inaccurate.

XVIII. NOTICES AND SUBMISSIONS

37. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and the Estate, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

As to EPA:

Peter DeCambre
U.S. Environmental Protection Agency, Region I
Office of Environmental Stewardship
One Congress Street, Suite 1100,
Mail Code SES
Boston, Massachusetts 02114

As to the Estate:

Estate of David W. St. Germain, Jr.
c/o Matthew St. Germain, Executor
8 Saint's Way
Berkley, MA 02779

As to Zeneca Inc:

Luke W. Mette
Vice President
Zeneca Inc.

for regular mail:

1800 Concord Pike
P.O. Box 15437
Wilmington, DE 19850-5347

for overnight mail:

1800 Concord Pike
Wilmington, DE 19803

cc:

Susan M. Cooke, P.C.
McDermott Will & Emery LLP
28 State Street

XIX. RETENTION OF JURISDICTION

38. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XX. INTEGRATION/APPENDICES

39. This Consent Decree and its appendices constitute the final, complete and exclusive Consent Decree and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A: St. Germain Drum Site Description;
Appendix B: Oak Street Superfund Site Description;
Appendix C: Rt. 44 Disposal Area Superfund Site Description; and
Appendix D: Consent Judgment Lien.

XXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

40. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Parties consent to the entry of this Consent Decree without further notice.

41. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XXII. SIGNATORIES/SERVICE

42. Each undersigned representative of the Settling Parties and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

43. Settling Parties hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Parties in writing that it no longer supports entry of the Consent Decree.

44. Settling Parties shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on their behalf with respect to all matters arising under or relating to this Consent Decree. Settling Parties hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that the Settling Parties need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXIII. FINAL JUDGMENT

45. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Parties. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXIV. EFFECTIVE DATE

46. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered, or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XXV. MODIFICATION

47. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

SO ORDERED THIS ____ DAY OF _____, 200__.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Estate of David W. St. Germain, Jr., Civil Action No. _____.

FOR THE UNITED STATES OF AMERICA

Matthew J. McKeown
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 1/30/07

Ellen M. Mahan
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: 1/30/07

Deanna J. Chang
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Estate of David W. St. Germain, Jr., Civil Action No. _____.

FOR THE UNITED STATES OF AMERICA

Date: 1/04/07

Robert W. Varney
Regional Administrator
Region I
U.S. Environmental Protection Agency
One Congress Street
Suite 1100
Boston, MA 02114-2023

Date: 12/14/06

Peter M. DeCambre
Senior Enforcement Counsel
Region I
U.S. Environmental Protection Agency
One Congress Street
Suite 1100
Boston, MA 02114-2023

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Estate of David W. St. Germain, Jr., Civil Action No. _____.

FOR DEFENDANT: THE ESTATE OF DAVID W. ST. GERMAIN, JR.

Date: 11-13-06

Name: [Signature]

Title: ADMINISTRATOR

Address: 7 SAINTS WAY BERKLEY, MASS

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____

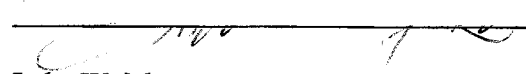
Title: _____

Address: _____

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Estate of David W. St. Germain, Jr., Civil Action No. _____.

FOR DEFENDANT: ZENECA INC.

Date: Oct. 23, 2006



Luke W. Mette
Vice President
Zeneca Inc.

for regular mail:
1800 Concord Pike
P.O. Box 15437
Wilmington, DE 19850-5347

for overnight mail:
1800 Concord Pike
Wilmington, DE 19803

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Susan M. Cooke, P.C.
McDermott Will & Emery LLP
28 State Street
Boston, MA 02109-1775